IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 657 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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CHANDRASINH RAMSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Civil Revision Application No. 657 of 2000

MR PS CHAMPANERI for Petitioner No. 1

Mr H N Sompura, AGP for Respondent No. 1

Mr Utpal Panchal for Respondent No. 2

NOTICE SERVED for Respondent No. 2/1

M/S.VYAS ASSOCIATES for Respondent No. 2/2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/06/2002

ORAL JUDGEMENT

Rule. Mr Utpal Panchal, learned Advocate waives service of rule for respondent no.2, 2/1 and 2/2. Mr H N

Sompura, learned AGP waives service of rule for respondent no.1.

By consent, this revision application is heard and disposed of finally. The petitioner herein is the original plaintiff in Civil Suit No.84/94 before the learned Civil Judge (SD) at Surendranagar. The said suit was filed and thereafter it was pointed out by the contesting repondents that the land which is the subject matter of the suit before the trial court, has been disposed of in favour of Dilipkumar, Kusumba and Devendra Jivarajbhai of Surendranagar by the said contesting respondents. In view of the written statement of the contesting respondents, the present petitioner submitted application for amendment in the plaint under Order 6 Rule 17 read with Order 1 rule 10 of the CPC for joining those three persons as defendants. After hearing the parties, the learned Judge passed order dated 21.2.2000 on the said application Exh.62 dismissing the said application of the petitioner mainly on the ground that the application for amendment was submitted very late. Feeling aggrieved by the said order, the petitioner-original plaintiff has preferred this revision application.

2. During the course of argument, learned Advocate for the contesting respondent states that though the written statement was filed in 1998, amendment application was submitted very late on 31.1.2000 and, therefore, according to his argument, the learned trial Judge was perferctly justified in rejecting the said application. It is true that there was some delay on the part of the petitioner in filing the said application for amendment in the plaint. Nevertheless, it is also required to be considered that when such a defence was taken by the contesting respondents, the petitioner would also require some time to ascertain whether it is necessary to join said persons as defendants or whether the decree which may be passed in the suit would bind those persons on the principle of lis pendent. Any way some time has been taken by the petitioner in deciding the matter and, therefore, that cannot come in the way of the petitioner in getting the plaint amended. This aspect of the case has not been considered properly by the trial court and, therefore, the order of the trial court cannot be sustained in the eye of law.

3. For the foregoing reasons, this revision application is allowed. The order passed by the trial court on 21.2.2000 below application Exh.62 is set aside and the petitioner herein is permitted to join those

three persons as defendants No.4, 5 and 6. The plaint shall be amended accordingly. On such amendment, summons shall be issued to those newly added defendants with copies of the amended plaint.

Rule is made absolute accordingly. No order as to costs.

26.6.02 [D P Buch, J.]
msp